

REPORT OF THE

# Human Rights Study Commission

TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA



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Report of the  
Human Rights Study Commission

to

The Governor and the General Assembly of Virginia

Richmond, Virginia  
December 1986

**To: The** Honorable Gerald L. Baliles, Governor of Virginia,  
and  
The General Assembly of Virginia

The Human Rights Study Commission was established as a result of two identical joint resolutions adopted by the 1985 Session of the General Assembly (House Joint Resolution No. 339 and Senate Joint Resolution No. 140). The Commission specifically was directed to review House Bill 900, which was introduced in the 1984 Session and carried over to the 1985 Session before being withdrawn in deference to this study. House Bill 900 proposed a comprehensive state human rights act and would have created a state human rights commission to administer and enforce the act. In this context, the Commission also was asked to review the laws of other states and any local ordinances currently in force among Virginia's local governments.

The Commission submitted an interim report to the 1986 General Assembly (House Document No. 30) indicating that substantial progress had been made but requesting an extension of the study in view of the complex nature of the subject matter. The study accordingly was extended for an additional year by House Joint Resolution 33 of the 1986 Session.

Appointed as House members of the Commission were Vincent F. Callahan, Jr., of Fairfax and Chief Patron of HJR No. 339, C. Richard Cranwell of Roanoke County, and Howard E. Copeland of Norfolk. Senate members were Richard L. Saslaw of Fairfax, Chief Patron of Senate Joint Resolution No. 140, and L. Douglas Wilder of Richmond City. Senator Wilder subsequently resigned from the Commission effective December 3, 1985, upon his election as Lieutenant Governor, and Senator Benjamin J. Lambert, III, of Richmond City was appointed in his place. citizen members appointed by the Governor included John D. Bassett, III, of Galax, Harrietta Eley of Norfolk, Antonia V. Hollomon of Richmond City, Michael J. Schewel of Richmond City, and Jon D. Strother of Springfield. Delegate Callahan was elected Chairman and Senator Saslaw Vice-Chairman at the organizational meeting of the Commission in Richmond on August 16, 1985.

The first order of procedure for the Commission was to afford the public an opportunity to express its views through a series of public hearings. Hearings were held on September 17 and 18, 1985, in Richmond, Norfolk, and Fairfax. Thereafter, the Commission held a total of six meetings and work sessions in Richmond between October 1985 and April 1986 to review the public hearing record, analyse in detail House Bill 900, and assess the effectiveness of existing federal civil rights laws and state statutes. The result of these deliberations was a Discussion Draft of a Proposed Human Rights Act which the Commission printed and distributed widely for public comment. Public hearings were held in Roanoke on June 26 and in Richmond on June 27 and the record was held open for written comments thereafter. The Commission then met on October 14 and October 27 to review the comments and develop a revised version of a Comprehensive Human Rights Act, a copy of which is included as Appendix D of this report.

## I. SUMMARY OF RECOMMENDATIONS

**The Commission** finds that there is a need for a comprehensive human rights statute and an agency with overall responsibility to administer its provisions. While there are some nondiscrimination provisions in Virginia law, the citizens of the Commonwealth are heavily dependent upon federal statutes and rules for protection from discrimination. The volume of complaints filed by citizens of Virginia under these federal provisions indicates that this state is by no means free of discrimination. The Commonwealth should take the initiative in addressing discrimination as a matter of state responsibility and should encourage its localities to do likewise. State and local action would afford greater access to assistance for those who believe that they have been the victims of discrimination, speedier resolution of complaints for all parties involved, and a public better informed about its rights and responsibilities with regard to unlawful discrimination. Accordingly, the Study Commission offers the following recommendations, which are described in more detail in this report and embodied in the proposed Virginia Human Rights Act.

1. A comprehensive Virginia Human Rights Act should be adopted. The Act would prohibit discrimination on the basis of race, color, religion, national origin, sex, age, marital status, or disability in employment, public accommodations, educational institutions, and housing. To the extent feasible, the Act should incorporate existing provisions of federal and state law.
2. A Human Rights Commission should be established to administer the provisions of the Act. The Commission should be empowered to investigate alleged violations of the Act, seek conciliation and voluntary resolution of complaints relating to alleged discriminatory practices, recommend remedial actions, and carry out various informational programs to promote non-discrimination. Failing voluntary resolution of complaints, however, remedies for discriminatory practices should be ordered only through the judicial process.

3. Enabling legislation should be adopted to allow any county, city, or town to **establish a local human rights commission**. If local ordinances confer substantially the same powers upon a local commission as are conferred upon the State Commission by the proposed State Act, the State Commission could defer cases to the local commission.

## **II. CURRENT SAFEGUARDS AGAINST DISCRIMINATION IN VIRGINIA**

In comparison with citizens of other states, the citizens of Virginia are heavily reliant upon federal law, federal agencies, and federal courts for protection against discrimination. Nondiscrimination provisions in Virginia law are limited and major areas of discrimination, including the single largest area of private employment, are not addressed at all. Further, many of the provisions which are found in Virginia law offer an aggrieved party redress only through the judicial process, a practice which not only places a costly and discouraging burden upon the parties but also fails to encourage informal resolution of complaints.

### **Major Federal Legislation**

Title II of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color, religion, or national origin in public accommodations. Title VII of the same act prohibits discrimination on the basis of race, color, religion, sex, or national origin in employment. A third major area of federal coverage can be found in Title VIII of the 1968 Civil Rights Act, which prohibits discrimination on the basis of race, color, religion, sex, or national origin in housing.

Administration and enforcement of the employment provisions of Title VII are provided by the Equal Employment Opportunity Commission. Similarly, the Department of Housing and Urban Development is responsible for administration and enforcement of the housing provisions of the 1968 Act. In both instances the federal statutes and regulations provide for the deferral of cases involving alleged discrimination to a comparable state agency if a state has adopted laws which afford substantially the same protections as those found in the federal statutes. Payments also will be made by the federal government to the state agency for the handling of cases at the state level.

Enforcement of the public accommodations provisions of Title II is through civil action or the United States Attorney General for preventive relief. Again the federal statutes provide for deferral to state enforcement. If there is a state or local law prohibiting such discrimination and authorizing a state or local authority to grant or seek relief from such practice, no civil action may be filed in federal court until thirty days after written notice of such alleged discriminatory practice has been given to the state or local authority, and the federal court thereafter may stay any civil action pending the termination of state or local enforcement proceedings. In addition to the rights of an aggrieved individual to seek relief, the Attorney General is empowered to seek preventive relief through civil action in the federal courts where that office determines that a pattern or practice of discrimination is involved.

The 1964 Civil Rights Act also contains other enforcement provisions of relevance to this study. Title IV of the Act permits the Attorney General to institute suits upon written complaint from a parent or group of parents that their minor child or children are being deprived by a school board of equal protection of the laws or upon the complaint by an individual or his parent that he has been denied admission or continued attendance at a public college by reason of race, color, religion, sex, or national origin, if the Attorney General determines that the complaining parties are unable to initiate or maintain proceedings on their own behalf. Title III of the Act similarly authorizes the Attorney General to maintain appropriate legal proceedings in cases of complaints by individuals that they have been denied equal utilization of state or local public facilities on account of race, color, religion, or national origin.

In addition to these provisions covering discrimination in major areas, numerous federal laws address discrimination against certain groups or classes of individuals. These laws in most instances are based on the authority of Congress to prohibit discrimination in programs and activities receiving federal funds. Major examples include Title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of sex, the Rehabilitation Act of 1973 prohibiting discrimination on the basis of handicap, and the Age Discrimination Act of 1975 prohibiting discrimination on the basis of age. The Age Discrimination in Employment Act of 1967, as amended, prohibits discrimination against persons age 40 to 70 in any industry affecting commerce and is based on the interstate commerce power.\*

This overview is not an exhaustive catalogue of federal 'human rights' protections. It does indicate, first, that federal activity is extensive, and secondly that the state is permitted to assume primary responsibility in many of these areas of nondiscrimination if it is willing to act.

### Current Virginia provisions

Virginia enacted a Fair Housing Law in 1972 (Chapter 5 of Title 36 of the Code of Virginia) which prohibits discrimination on the basis of race, color, religion, national origin, sex, elderliness, parenthood, or handicap. Administration and enforcement of the Law is the responsibility of the Virginia Real Estate Board, which for that purpose appoints a Fair Housing Administrator. The powers of the Board are directed towards disciplinary actions to revoke, suspend, or fail to renew the license of a licensee. The Board may advise the Attorney General if it has reasonable cause to believe that the law has been violated, and the Attorney General may seek to enjoin such violation in the circuit court. An individual adversely affected by discrimination has the right to seek injunctive relief and money damages through the judicial process.

**The other major nondiscrimination statute to be found in Virginia is the Virginians with Disabilities Act, which was enacted by the General Assembly in 1985 (Title 51.01 of the Code of Virginia). Chapter 9 of the Act prohibits discrimination on the basis of disability in employment, educational institutions exercising the right to vote, public places and places of public accommodations and housing accommodations. The Department for Rights of the Disabled monitors the implementation of these provisions and assists persons with disabilities in the protection of their rights. Enforcement is by action before the circuit court, either by the aggrieved party or through representation of the Department or the Office of the Attorney General.**

**Virginia does not have a law which prohibits private employment discrimination along the Lines of Title VII of the 1964 Civil Rights Act. According to the Virginia Advisory Committee to the United States Commission on Civil Rights, Virginia is one of only three states not having a state agency to enforce nondiscrimination in employment.**

**By executive orders since 1973, and most recently Executive Order Number One (January 11, 1986), discrimination has been prohibited in state executive branch employment on the basis of race, sex, color, national origin, religion, age, political affiliation, or disability. Complaints are investigated and resolution attempted by the Office of Employment Services and Program Evaluation, but that office cannot grant relief or institute legal proceedings. See also §2.1-116.10 of the Code of Virginia, which declares it the policy of the Commonwealth to provide equal employment without regard to race, color, religion, national origin, political affiliation, handicap, sex or age. Chapter 10.2 of Title 2.1, of which the cited section is a part, creates the Virginia Equal Employment Opportunity Council to monitor and make recommendations to state agencies regarding the implementation of that policy. Also to be noted is that complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin, or sex are grievable under the state's grievance procedure (§2.1-114.5:1).**

**The Virginia Fair Employment Contracting Act of 1980 provides that state agencies will not discriminate on the basis of race, color, religion, sex, or national origin in the awarding of contracts. It also requires that contracts of over ten thousand dollars shall contain provisions requiring the contractor to agree that the contractor will not so discriminate during the performance of the contract (Chapter 25 of Title 2.1). No penalties or enforcement procedures are provided, however. The Virginia Public Procurement Act, also prohibits public bodies from discriminating on the basis of race, religion, color, sex, or national origin in the awarding of contracts.**

**Other than the provisions of the Virginians with Disabilities Act cited above, Virginia has neither statutory provisions or enforcement agencies with regard to discrimination in public accommodations.**



In summary, Virginia has few statutory provisions or enforcement agencies which would track those at the federal level. The most obvious exception is in the-area of housing. There are some administrative provisions regarding public employment discrimination at the state level, and some public contracting and procurement provisions require but provide no enforcement mechanism for nondiscrimination in private sector employment. Neither discrimination in public accomodations nor in educational institutions is addressed other than in the instance of prohibitions against discrimination on the basis of disability.

Virginia is one of only six states, according to the Virginia Advisory Committee to the United States Commission on Civil Rights, which has not adopted a human rights act and established an agency to administer it. This Study Commission's own survey indicates that the scope of coverage and the enforcement authority of such agencies in **other** states varies considerably. It should not be assumed that each of the other states has a human rights agency and act as comprehensive as is recommended by this Commission in this report. Nevertheless, it is clear that most states have moved further in this direction than has Virginia.

A final note with regards to human rights activity in Virginia is that Fairfax County and the City of Alexandria do have Human Relations Commissions which enforce local nondiscrimination ordinances. Alexandria's Commission has been established through charter provisions and Fairfax County's Commission operates by virtue of §§15.1-783.1 and 15.1-783.2 of the Code of Virginia (Urban County Executive Form of Government). Each of these agencies has been granted deferral status by the appropriate federal office to enforce nondiscrimination provisions in employment and housing. The local ordinances address other types of discrimination. Arlington County is also authorized by virtue of §15.1-687.3 (County Manager Plan of Government) to establish a local commission on human rights. The City of Richmond through its charter has a human relations commission but its authority is considerably less than that of the Alexandria and Fairfax commissions and it is not regarded as an enforcement agency.

The foregoing description is not intended to be a complete inventory of nondiscrimination provisions in Virginia law. (The Equal Credit Opportunity Act, for example, prohibits discrimination on the basis of race, color, religion, national origin, sex, marital status, or age.) It does seek to identify Virginia's status with regard to major areas of discrimination addressed by major federal legislation and most commonly addressed by human rights statutes and enforcement agencies in other states.

#### The Need for a Comprehensive Human Rights Act and Human Rights Agency in Virginia

A key purpose of the series of public hearings held by the Commission was to ascertain whether there was in fact a need for a state human rights law and



Human Rights Commission in view of the existing federal protections. The overwhelming preponderance of the testimony was supportive of a state effort, including the availability of local commissions in communities which wish to support them. As might be expected, given the lack of state law, testimony centered heavily upon employment discrimination concerns. Included as Appendix A of this report is a table analysing complaints filed from Virginia with the federal Equal Employment Opportunity Commission. It will be seen that over the last five years (1981-1985), an average of over 2,600 cases per year were filed with E.E.O.C. by citizens of Virginia.

The position taken by individual citizens and by spokespersons for groups likely to be most affected emphasized what they considered the excessive length of time required by the E.E.O.C. process. On the other hand, the Virginia Manufacturers Association challenged the need for state level action. The Association argued that citizens of Virginia have been able to secure protection against employment discrimination in a timely fashion through the E.E.O.C. process. Its position also was that introducing a state level of enforcement in addition to the federal one would create confusion, increase costs of resolving complaints, and extend rather than reduce the time required to resolve complaints.

The Commission concluded that a state agency and local level agencies will be able to focus attention solely upon those cases arising in Virginia and thus should be able to process a larger number of cases in a more timely fashion. A series of deadlines and time tables have been incorporated into the proposed Act to ensure that such is the case and thereby reduce the time required to resolve complaints with a concomitant reduction in associated costs. Further, the Commission sees little or no opportunity for confusion since the recommended legislation consists of one comprehensive act based upon the framework of existing Virginia statutes and federal law.

The Commission also finds and concurs with the public hearing testimony that state and local agencies are likely to provide better citizen access to the protection process. The Commission further believes that public education and information regarding discriminatory practices and significant efforts to conciliate or otherwise informally resolve complaints short of the more formal and adversarial procedures are crucial aspects of the protection process. The state and local efforts embodied in the proposed Act should better promote those goals.

The conclusions drawn with regard to employment apply to an even greater extent in those areas, such as public accommodations, where recourse is to federal courts or the U. S. Attorney General rather than to a federal assistance agency. State and local agencies will be more readily available to handle complaints and will provide an important avenue not now open for education and for informal conciliation and resolution of complaints and practices in such areas of discrimination.

The Commission finally contends that the state should exercise its primary responsibility to its citizens to protect their rights. Virginia long has prided itself on a tradition of state independence and responsibility and decried the intrusion of federal authority into state affairs. It seems somewhat incongruous for Virginia to fail to take responsibility in an area where there is an obvious opportunity to do so.

The Commission finds no compelling reason to divide responsibility for enforcement of nondiscrimination provisions among several agencies and consequently recommends a comprehensive human rights act which will include all the major antidiscrimination provisions. The logical first step is to incorporate the major statutes and procedures now found in Virginia law. Accordingly, responsibility for fair housing should be transferred from the Virginia Real Estate Board to the Human Rights Commission and the nondiscrimination provisions of the Virginians with Disabilities Act should be incorporated in the comprehensive human rights act. The parts of the comprehensive act addressing coverages not now in Virginia law should parallel to the extent possible present federal statutes and rules. In this fashion, the coverages of the comprehensive act largely will be familiar to the interested parties and consistent with the Study Commission's desire to follow existing law rather than embark on major new antidiscrimination concerns.

### III. THE COMPREHENSIVE HUMAN RIGHTS ACT

The National Conference of Commissioners on Uniform State Laws issued a model Anti-Discrimination Act in 1966. This Model Act was based on existing federal law and the laws of states which had developed state anti-discrimination acts up to that point. When interest arose early in this decade in a human rights act for Virginia, apparently became clear to proponents of an act that the 1966 Model Act needed to be updated in view of further federal legislation, court decisions, and existing Virginia law. Accordingly, Carlyle C. Ring, Jr., of Alexandria, President of the National Conference of Commissioners on Uniform State Laws, commissioned a team of faculty and students at Washington and Lee University and the University of Virginia law schools to draft such an updated model. This work was done in 1983 and presented to the Statewide Conference on Civil Rights Complaints and Enforcement, held by the Virginia Advisory Committee to the United States Commission on Human Rights. Delegate Vincent Callahan of Fairfax, a member of the Advisory Committee, in turn introduced the Act as House Bill 900 in the 1984 Session.

This study commission approached its task with the philosophy that any comprehensive human rights act and a human rights commission it might recommend should so far as possible be within the existing framework of Virginia statutes already enacted into law and the federal law in the areas of major concern where Virginia had not acted. The Commission considered establishment of a solid base for antidiscrimination protection through state and local human rights commissions and filling of the major gaps in Virginia's present statutory protections to be the most immediate concerns. Any act proposed at this time should contain provisions from existing state or federal law which are familiar to those who have been involved in antidiscrimination activities, both those who advise and represent classes of protected citizens and those in the public and private sector upon whom the obligation rests to observe and protect and promote such protections. The Model Act as embodied in House Bill 900, while containing provisions which might be desirable, went beyond this scope.

The nondiscrimination provisions of the present Fair Housing Law, which for the most part also track Title VIII of the 1968 Civil Rights Act, were incorporated into Article 5 of the proposed Act with little change. The enforcement procedure is different, of course, since responsibility is shifted from the Real Estate Board to the proposed Human Rights Commission. The provisions of the Virginia Disabilities Act also have been incorporated with minimum change. The format of the proposed Act, however, does require that the Disabilities Act provisions be broken up and dispersed throughout the proposed Act. The employment, public accommodations, and educational institutions articles of the proposed Act are patterned after provisions in respective federal statutes.

The main divisions of the proposed Act may be briefly summarized and described as follows.

### Article 1. General Provisions

Article 1 declares it to be the policy of the Commonwealth to safeguard its citizens from discrimination and identifies the classes of discrimination prohibited by the Act. These include discrimination based on race, color, religion, national origin, sex, age, marital status, or disability. The Act is to be given a liberal construction, is not deemed to repeal other laws dealing with discrimination not in conflict with the Act unless specifically repealed, and does not supercede federal acts, rules, and regulations. It is not to be construed as affecting any programs established specifically to the benefit of persons with disabilities or programs in which a differentiation on the basis of age is reasonably necessary.

The article contains a number of definitions applicable to the Act as a whole. Those dealing with disabilities are taken from the present Virginians with Disabilities Act. The other definitions are generally taken from federal statute or, where necessary, from the NCCUSL Model Act. Other definitions specific to a particular area of discrimination may be found in the particular article of the Act addressing that subject.

The areas of discrimination covered by the Act include employment, public accommodations, educational institutions, and housing. Attention is called to Appendix B of this report which shows in tabular form a cross reference between areas of discrimination and protected classes in terms of present federal and state coverage. The reader is reminded that certain exemptions and qualifications may be placed on these general areas of coverage in the specific articles which deal with them.

### Article 2. Discrimination in Employment

Federal statutes now prohibit discrimination in employment on the basis of race, color, religion, national origin, sex, age, and disability. Virginia law only addresses discrimination on the basis of disability. The prohibition against discrimination on the basis of marital status is a new coverage proposed in House Bill 900 which the Commission endorses and adds to this Act. For

**purposes of the employment article, Article 1 defines age as being between forty and seventy years of age. This provision is based on the Federal Age Discrimination in Employment Act of 1967, which is applicable to employers, employment agencies, and unions engaged in an industry affecting interstate commerce. The Age Discrimination Act of 1975 does not contain this Limitation and is applicable to any program receiving federal assistance. Because private employment is most likely to be affected by the provisions of the 1967 Act, and in view of the Commission's intent to remain as far as feasible within the constraints of existing requirements, the limitation on age was included in the proposed Act\*. The federal provisions with regard to programs receiving federal assistance would still apply to the extent they now do so.**

**The article applies to private and public employers, employment agencies, labor organizations, and joint labor-management committees. Employers are covered if they employ fifteen or more employees, as is the provision of Title VII of the 1964 Civil Rights Act.**

### **Article 3. Discrimination in Public Accommodations**

**Title II of the 1964 Civil Rights Act prohibits discrimination in places of public accommodation on the basis of race, color, religion, or national origin and is the basis for this article, along with the applicable provisions of the Virginians with Disabilities Act. The Study Commission recommends inclusion of sex, age, and marital status as protected classes in this article, although they are not now addressed by federal or state laws. An exception is provided so that any facility which is uniquely private and personal in nature, such as restrooms, shower rooms, and dormitory type lodging facilities, may require separation by sex. Private clubs are not covered by the article except at such times as the facilities are in fact being made available to the public. As specified in Article 1, the prohibition against discrimination on the basis of age applies to persons eighteen years of age and over.**

### **Article 4. Educational Institutions**

**This article makes it a discriminatory practice to deny admission or full and equal access to educational and extracurricular programs on the basis of race, color, religion, national origin, sex, age, marital status, or disability. It applies to all public schools and educational institutions and to any private institution which is a recipient of state funds. Prohibitions against such discrimination are now found in federal but not state law with regard to race, color, religion, national origin, and sex. Prohibitions against discrimination on the basis of disability are found in federal law and in the Virginians with Disabilities Act. The provisions with regard to age and marital status are new. The article does contain exceptions for religious preference on the part of religious educational institutions or institutions operated or controlled by a religious institution. It also will allow an educational institution which traditionally and continually from its establishment had limited admission to students of one sex to continue such a policy. Exceptions are also provided for educational institutions carrying out plans to eliminate or reduce imbalances with regard to the several protected classes.**

## Article 5. Housing

This article incorporates the nondiscrimination provisions of the Virginia Fair Housing Law, which in turn is derived from Title VIII of the 1968 Civil Rights Act. Title VIII prohibited housing discrimination on the basis of race color, religion, national origin, or sex. The Virginia Fair Housing Law extended the prohibition to include "elderliness, parenthood, or handicap." The proposed act substitutes the term age for elderliness but retains the current statutory authority for all adult or all elderly communities. The proposed act retains the provisions with regard to parenthood, but does not include the general prohibition on marital status found in the other articles of the act. The proposed act uses the term disability rather than handicap and incorporates the relevant provisions of the Virginians with Disabilities Act.

## Article 6. Commission on Human Rights

The Commission on Human Rights is to **consist** of nine members appointed by the Governor and confirmed by the General Assembly for terms of four years. No more than five of the members may be from the same party the Commission shall to the extent feasible reflect a diversity spelled out in the act and the Commission must include at least one person in the business of real estate and at least one employer. A State Human Rights Director is to be appointed by and serve at the pleasure of the Governor.

The Commission on Human Rights is authorized to receive investigate seek to conciliate, hold hearings, and make findings and recommendations as to alleged violations of the Human Rights Act. The Commission is not authorized to order remedies; it may only recommend a settlement. If the respondent in a case declines to accept the recommendations of the Commission, the Commission forwards the case to the Attorney General who may then bring a civil action to resolve the complaint. Appendix C of this report offers a chart which shows the procedure under which complaints of discrimination would be processed. The main steps in the procedure may be summarized as follows.

1. A complaint must be filed within 180 days of the occurrence of the alleged discriminatory act. Alternatively, a complainant has 180 days from learning that the act occurred if such knowledge is obtained after the fact, but in no event can a complaint be filed more than 18 months after the alleged discriminatory act occurred.

2. The Commission has 180 days after a complaint is filed to determine whether reasonable cause exists to confirm that an alleged discriminatory practice has occurred and, if so, to seek to eliminate the practice through conference, conciliation, and persuasion. By the end of the 180 day period the Commission either must have dismissed a complaint for lack of reasonable cause, the terms of a negotiated agreement must have been entered in court or the Commission must have served notice upon the respondent for a formal hearing.



3. By day 300 after the filing of the complaint, the Commission must have conducted a hearing to determine whether probable cause exists that there has been a violation. If so, it also must have issued its recommendations and, if the recommendations are not accepted by the respondent, the matter must have been referred to the Attorney General if that is the Commission's intention. Finally, the Attorney General must have determined whether to proceed with a civil action and, if the decision is not to proceed, must have notified the complainant of that fact.

4. The complainant must file a civil action within one year of having filed the original complaint, should the Attorney General determine not to bring suit. However, a complainant may not file a civil action so long as the grievance is pending before the Commission. In effect, the complainant must allow the Commission process to run its course before seeking judicial relief and, in view of the deadlines noted above, the complainant may have a minimum of 65 days in which to bring an action if the Commonwealth fails to do so.

The remedies which the Commission may recommend are found in subsection C of §2.1-746 of the proposed act. These are also the remedies which the court may order, along with such other equitable relief as may be authorized law. The Commission may recommend or the court may order the payment of actual damages and reasonable attorney fees. There is a specific prohibition, however, against the awarding of punitive or exemplary damages.

The article also provides, in case of public contractors or respondents operating by virtue of a license issued by the Commonwealth, that the contracting agency or licensing agency be notified of either a Commission finding or court determination that a violation has occurred. The contracting agency or licensing agency in turn is authorized to take various disciplinary actions with regard to a licensee or with regard to existing contracts and the right to participate in future contracts.

#### Article 7. Miscellaneous Provisions

Article 7 contains several miscellaneous provisions, including prohibitions against retaliation. Interference with the performance of the duties of the Commission is made a class 2 misdemeanor.

#### Article 8. Local Human Rights Commissions

This article authorizes any county, city, or town, either individually or jointly, to create a human rights commission and establish a human rights ordinance. The Ordinance essentially can parallel any of the provisions of the state act and the local commission can exercise the same powers locally as granted to the state commission at the state level. A savings clause is included for the few human rights commissions which now exist which will allow them to exercise any additional powers which they now enjoy. The purpose of this clause is to prevent disruption to these established local commissions. Article 8 provides that the state human rights commission may enter into agreements with



local commissions whereby the state will defer complaints to the affected local commission.-- The article also prevents dual filing with both the state and local commissions. The purpose of these provisions is to encourage the creation of effective local human rights enforcement efforts.

### Staff and Budget of the Commission

The Commission has not included in the proposed act or in this report specific recommendations with regard to the size of the staff for the human rights commission or with regard to the organization and location of offices and services. These matters are better left to administrative decision.

The Commission would emphasize two principles which we believe should guide thinking about the operation of the Commission.

First, staffing of the Commission should be a phased process and it would not be necessary to incur the costs of the projected full staff immediately. Initial staffing for the first year largely can be drawn from existing state positions, in the Office of Equal Employment Services and Program Evaluations and the Fair Housing Administrator among others, whose functions would be subsumed under the Human Rights Commission. The staff in turn could be expected to grow incrementally over the next three years at the same rate and reach the permanent level in the fourth year.

Second, allowance should be made for the fact that at least a part of the cost of the operation would be offset by payments from federal agencies once deferral status under the federal EEOC and HUD regulations is achieved. The amount of the payment and the number of cases is determined by contract and is based on an evaluation of the capacity of the state agency to process a number of cases, so that this source of funding also should phase in as the commission staff expands.

These assumptions are emphasized for a specific reason. The Study Commission reviewed a fiscal impact statement prepared by the Department of Planning and Budget in 1985 for House Bill 900. That analysis assumed a total staff of 50 persons for the Commission, with at least four different locations for offices. The Department estimated the costs annually at a net of \$1.2 million after offsetting for federal reimbursements for deferral cases. The Commission concluded that these estimates were somewhat high and probably underestimated the number of cases for which the state would be reimbursed by the federal agencies, but might not be unreasonably out of line for a fully operational Commission. It is highly unlikely, however, that a new Commission would begin to approximate that level of activity, or could efficiently and effectively do so, as a new agency in its first year. Further, that estimate fails to account for the offset which will be recaptured from current state programs, as in housing and state employment, by bringing these operations under the human rights commission, nor does it take into account the projected activities of local human rights commissions.

A more realistic view, we believe, was offered by a subcommittee of the Virginia Equal Employment Opportunity Committee (now Council) in 1984. That projection was for an initial year staffing level of fourteen and a cost of \$424,000, offset by a minimum of \$171,000 recaptured from existing positions for a net cost of \$253,000. The projection thereafter was for growth at the rate of 10 persons per year for the next three years to a full complement of 44 staff persons and a cost of \$1.1 million. However, this analysis assumed that by the end of the third year and into the fourth year a staff of that size could expect to receive payment for 1400 deferred cases from federal agencies. This offset would leave a net cost of \$571,000 for the fourth year. The number of cases in this analysis is almost three times that estimated by the Department of Planning and Budget in its analysis.

The Commission itself is not in a position to resolve the difference between these two estimates. Indeed, the two estimates are comparable in terms of the assumptions concerning staffing levels and gross cost of a fully operational agency. Testimony to the Commission from persons familiar with state and local agencies suggested that the Department's estimate was too conservative in the federal deferral caseload and fiscal offset which reasonably could be expected, and thus high in the net cost of the program. The more significant point is that a realistic approach will call for the phased development of the human rights commission with attendant lower initial costs.

Finally, the most important point which can be made with regard to the debate over the cost of the program is that either estimate represents a small investment in terms of the state's resources when weighed against an invaluable commitment to the basic rights of the citizens of the Commonwealth.

\*staff Note: The Study Commission made its recommendations prior to the enactment of PL 99-592 by the Ninety-Ninth Congress. PL 99-592, which was signed into law by President Reagan on October 31, 1986, eliminated the age 70 ceiling of the Age Discrimination in Employment Act. As amended, that act will apply to all those forty years of age and over.

Respectfully submitted,

Vincent F. Callahan, Jr., Chairman

Richard L. Saslaw, Vice-Chairman

Howard E. Copeland

Benjamin J. Lambert, III

Harrietta Eley

Antonia V. Hollomon

Michael J. Schewel

Jon D. Strother

### **STATEMENT OF DELEGATE C. RICHARD CRANWELL**

**Philosophically, I support a reasonable Human Rights Act for the Commonwealth. I say this because I feel that the various executive orders in the Commonwealth already have an effective Human Rights Policy.**

**Overall, I agree with the thrust and purpose of the Draft Human Rights Act. However, I think the Draft Act will require so many technical amendments that it will be impossible to pass during the short session. Thus, although I agree philosophically with the thrust of the Draft Human Rights Act, I feel that it is so technically flawed as to make its passage an impossibility.**

### **STATEMENT OF JOHN D. BASSETT, III**

**I vote against the proposed Human Rights Act for the following reason. Virtually everything included in this proposed state statute is presently covered by either federal and/or state laws. What is new and needed could easily be incorporated in present statutes. I find this a needless duplication.**

**Certainly the goals of this Commission are lofty and well meaning; but with our government faced with a \$200 billion budget deficit and \$175 billion trade deficit (December, 1986, being the highest monthly deficit in the history of our country), we do not need to burden our taxpayers and our businesses with inefficient government. If there was no such legislation as proposed at either the federal or state level, I would be totally in favor of a Virginia Human Rights Commission. However, this is not the case. More does not necessarily mean better. There may be some justification for localities having Human Rights Commission. If additional services are needed, they are probably needed at the local level.**